

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JINJU ZHANG,

Plaintiff,

v.

BELIN YUAN, et al.,

Defendants.

Case No. 23-cv-05818-VC

**ORDER DENYING MOTION TO  
DISMISS THIRD AMENDED  
DERIVATIVE COUNTERCLAIM**

Re: Dkt. No. 130

The motion to dismiss Yuan’s third amended counterclaim is denied. Zhang’s argument that the \$50,000 state court settlement could not have been a recovery on behalf of Camiwell because Yuan paid it personally makes no sense, and also contradicts the allegations in the counterclaim. His argument that the counterclaim does not comply with Rule 23.1 because it does not state both what efforts Yuan made to demand that the Camiwell board take action *and* the reason for not making any such efforts fails because Rule 23.1 requires a shareholder bringing a derivative suit to plead the efforts they took to demand action *or* why such efforts would have been futile, not both. *Arduini v. Hart*, 774 F.3d 622, 628 (9th Cir. 2014). And his final arguments—that the counterclaim does not plead with sufficient particularity the reasons why a demand would have been futile and that it does not satisfy California Corporations Code section 800(b)(2)—are waived because they were raised for the first time on reply. Indeed, not only does Zhang’s motion not include these arguments, it concedes that Yuan *did* satisfy “the second prong” of Rule 23.1 and adequately state why he made no demand on the Camiwell board.

**IT IS SO ORDERED.**

Dated: November 14, 2024

A handwritten signature in black ink, appearing to read 'V. Chhabria', is positioned above a horizontal line.

VINCE CHHABRIA  
United States District Judge